DEPARTMENT OF THE CORPORATION COUNSEL

Carrie K.S. Okinaga, Corporation Counsel
Donna M. Woo, First Deputy Corporation Counsel

POWERS, DUTIES AND FUNCTIONS

The Corporation Counsel serves as the chief legal advisor and legal representative of all agencies, the City Council and all officers and employees in matters relating to their official powers and duties, and shall represent the City in all legal proceedings and shall perform all other services incident to the office as may be required by the Charter or by law.

ORGANIZATION OF DEPARTMENT

The Department of the Corporation Counsel is organized into the Administration and four other divisions, namely:

1. Counseling and Drafting
2. Litigation
3. Family Support
4. Real Property Tax

COUNSELING AND DRAFTING DIVISION

The Counseling and Drafting Division is comprised of 20 deputies Corporation Counsel, four paralegal assistants, seven legal clerks and one librarian technician. The division performs the function of legal advisor to all the city agencies, the city boards and commissions, and the City Council and its committees. In this advisory function, the division is responsible for rendering oral and written opinions to all of the entities it advises, for drafting bills and resolutions for submission to the City Council or the State Legislature, for reviewing and approving legal documents to which the City is a signatory, and for attending all the meetings of the City Council, the council committees, and the city boards and commissions.

The division performs the legal representation function, representing city agencies, in city and state administrative proceedings. The division also performs the legal representation function in selected court proceedings such as eminent domain proceedings, quiet title, partitions of land court property, administrative appeals, foreclosures, bankruptcy, interpleader actions for the return of seized property and other matters as may be specially assigned to it.

Statistics

For the fiscal year July 2005 to June 2006 the division commenced the year with 4,126 outstanding opinion requests, thereafter received 1,655 requests, completed and closed 1,108 requests, had a workload of 5,781 requests during the year, and closed the year with a total of 4,673 outstanding requests. Separate and apart from the foregoing count of opinion requests, the division issued two Memoranda of Law, which responded to two opinion requests received during the year. The division commenced the year with 34 outstanding drafting requests (i.e. requests to draft bills, resolutions, leases, easements, contracts etc.), thereafter received eight requests, completed and closed four requests, had a workload of 42 requests during the year, and closed the year with a total of 38 outstanding requests. The division commenced the year with 658 outstanding requests for review and approval of legal documents, thereafter received 4,210 requests, completed and closed 4,371 requests, had a workload of 4,868 requests during the year, and closed the year with a total of 497 outstanding requests.

The division commenced the year with 272 outstanding pre-suit cases (i.e. adversarial proceedings pending before administrative bodies), thereafter received 198 requests, completed and closed 144 requests, had a workload of 470 cases during the year, and closed the year with a total of 326 outstanding requests. The division commenced the year with 554 outstanding case assignments (i.e. cases in any of the state or federal courts), thereafter received 96 requests, completed and closed 143 requests, had a workload of 650 cases during the year, and closed the year with a total of 507 outstanding requests.

Highlights and Accomplishments

Memoranda of Law

The division issued two numbered memoranda of law in the fiscal year.

Memorandum of Law No. 05-4 advised the Department of Budget and Fiscal Services generally on its obligation to provide relocation benefits for displaced occupants. The situation prompting the inquiry

had resolved but the facts presented were utilized in providing guidance to the agency in relocation benefits under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act. (Gordon D. Nelson)

Memorandum of Law No. 05-5 also responded to the Department of Budget and Fiscal Services for advice regarding its obligation to reconvey specific remnant parcels of land created by the recent realignment of a city street based upon the language of the 1935 quitclaim deed to the City of the property for road purposes. We advised that the agency is not obligated to reconvey the parcels and that the City may claim compensation should it elect to reconvey the land. (Gordon D. Nelson)

City Council

We defended the City Council in a lawsuit for declaratory judgment on the interpretation of a Sunshine Law provision addressing serial one-on-one communications between members of the Council, entitled Right to Know Committee, et al. v. City Council, City and County of Honolulu, Civil No. 05-1-1760-10 (EEH). The eight named plaintiffs in the State of Hawaii, First Circuit Court lawsuit were Right to Know Committee, League of Women Voters of Hawaii, Society of Professional Journalists, Hawaii Chapter, University of Hawaii Chapter of the Society of Professional Journalists, Big Island Press Club, Inc., Hawaii Political Reform Project, Citizen Voice and the Honolulu Community Media Council. The State of Hawaii intervened as Plaintiff. The City and the nine councilmembers, named in their official capacities as councilmembers, were named defendants. The dispute arose out of the proposed reorganization of the City Council in July 2005, the issuance of an unsolicited opinion letter from the State of Hawaii, Office of Information Practices ("OIP"), to the Council Chair and copied to each Councilmember and followed by a numbered OIP Opinion No. 05-015 that concludes that while the Sunshine Law allows two councilmembers to privately discuss Council business between themselves, the Sunshine Law prohibits either of the two councilmembers from then participating in a private conversation with any other councilmember about the same council business.

We filed a motion to dismiss the lawsuit in October 2005 and prevailed in having all but one paragraph of the complaint dismissed from the litigation. The surviving issue in the lawsuit was the subject of the Plaintiffs' motion for summary judgment that was heard in January 2006, which motion was joined in by the State of Hawaii as intervenor in the lawsuit. The court gave significant deference to the interpretation of the statute as articulated by OIP in its Opinion No. 05-015 and entered its opinion granting Plaintiffs' motion, finding that serial one-on-one communications are prohibited under the Sunshine Law. Following entry of judgment in the Circuit Court proceeding in May 2006, we noticed an appeal to the Intermediate Appellate Court, contesting the Circuit Court decision on the interpretation of the Sunshine Law. The appeal is entitled Right to Know Committee, et al. v. City Council, City and County of Honolulu, et al., Supreme Court No. 27996. (Don S. Kitaoka, Reid M. Yamashiro, Derek T. Mayeshiro, John S. Mackey)

Charter Commission

In the General Election of November 2004, the electorate approved a Council-initiated proposal for a Charter amendment to convene a Charter Commission every 10 years in years ending in "4". Pursuant to the 2004 Charter amendment, the City Charter Commission convened its first meeting in December 2004, and continues its process of identifying and developing proposals to amend our 1973 Revised Charter of the City and County of Honolulu (2000 Ed.) as amended, and to implement educational programs to inform the voters of the proposals submitted to the City Clerk for inclusion on the ballot for the General Election in November 2006. The Charter Commission solicited proposals for Charter amendment from the community and city agencies and amassed a total of 108 proposals when it commenced its process for consideration of proposals for Charter amendments. The Charter Commission has held approximately 22 meetings through June 2006, and also held public hearings in Kapolei, Kailua and Hawaii Kai to solicit comments from the community on the 108 proposed amendments. We advised and will continue to advise the Charter Commission on procedural matters, legal issues presented by proposed charter amendments and propose language revision for clarity and style. (Dawn D. M. Spurlin, Lori K. K. Sunakoda, Diane T. Kawauchi)

Community Services Section

Parade Activities. We advised the Department of Transportation Services in the promulgation of its administrative rules in conjunction with the implementation of the terms of the settlement agreement entered into by the City to resolve the three lawsuits arising out of the Family Day Parade and Family Day Festival held on July 5, 2003, in Waikiki and a Family Day Festival held on February 14, 2004, in Aala Park. We previously reported on these lawsuits entitled, Parents, Family, Friends of Lesbians and Gays (PFLAG), et al. v. City and County of Honolulu, et al., USDC Civil No. CV03-00332 HG-KSC (Consolidated); Watland v. City and County of Honolulu, et al., USDC Civil No. CV04-11109 SPK-BMK (Consolidated); Beckman, et al. v. City and County of Honolulu, et al., First Circuit Court, Civil No. 03-1-1451-07 (BIA).

We also advised the Council on its consideration of legislation that restricts the number of parades in the Waikiki Special District. Bill 84 (2004) CD2, FD2, was adopted by the Council on August 16, 2006, and enacted as Ordinance No. 06-39. (Reid M. Yamashiro)

In the Matter of Water Use Permit Applications, Petitions for Interim Instream Flow Standard Amendments, and Petitions for Water Reservations for the Waiahole Ditch Combined Contested Case Hearing, Supreme Court No. 24873 and Case No. CCH-OA-95-1. As reported in our prior annual report, in June 2004, the Hawaii Supreme Court issued its decision in

the appeal of the action of the State Commission on Water Resource Management ("Water Commission") and remanded the case to the Water Commission for further findings and conclusions on the issue of: (1) the designation of an interim instream flow standard for windward streams; (2) 2.2 million gallons per day of unpermitted water; (3) the practicability of Campbell Estate and Puu Makakilo, Inc., using alternative ground water sources; (4) the actual water needs of Campbell Estate Field Nos. 115, 116, and 145 (Jefts); (5) the actual water needs of Campbell Estate Fields Nos. 146 and 166 (Garst Seeds); and (6) the State of Hawaii Agribusiness Development Corporation's water use permit for systems losses. We represented the Board of Water Supply ("BWS") and the Department of Planning and Permitting ("DPP") in the Hawaii Supreme Court appeal.

We continued with our representation of BWS and DPP at the contested case hearing on April 5, 2005, and for closing oral arguments on June 1, 2005, on the issues remanded by the Hawaii Supreme Court to the Water Commission. On July 13, 2006, the Water Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order in the remanded proceedings entitled, "In the Matter of Water Use Permit Applications, Petitions for Interim Instream Flow Standard Amendments, and Petitions for Water Reservations for the Waiahole Ditch Combined Contested Case Hearing (CCH-OA95-1)." The Windward Parties and Hawaii's Thousand Friends have filed appeals on the decision to the Intermediate Court of Appeals. (Reid M. Yamashiro)

Repeal of the Condominium Leasehold Conversion Law. The City's lease-to-fee condominium conversion law, Chapter 38, Revised Ordinances of Honolulu ("ROH"), was repealed effective February 9, 2005, by Ordinance No. 05-001. Several condominium unit owners in the Kahala Beach and Discovery Bay condominium projects sued the City challenging the validity of the action to repeal and its applicability to the Plaintiff-unit owners, in Hsiung v. City and County of Honolulu, USDC Civil No. CV05-00104 DAE-LEK (Kahala Beach) and Matsuda v. City and County of Honolulu, USDC Civil No. CV05-00125 CDE-LEK (Discovery Bay). In October 2005, United States District Court Judge David Ezra issued an order in the City's favor in each of the cases by granting the City's motion for summary judgment. The City prevailed on all counts. In its October 2005 orders, the Court reaffirmed its reasoning in its earlier July 2005 order that denied Plaintiffs' motion for summary judgment, by holding that under the reserved powers doctrine, the City is not bound by a contract that purports to limit the City's power of eminent domain. The Court concluded that the City Council acted within its constitutional and legal authority in repealing Chapter 38, ROH. Plaintiffs in the Discovery Bay lawsuit have appealed the decision to the United States Court of Appeals for the Ninth Circuit. The appeal has been fully briefed and is awaiting decision. (Don S. Kitaoka, Derek T. Mayeshiro, Paul M. Iguchi)

Communications-Pacific, Inc. v. City and County of Honolulu, et al., Civil No. 05-1-2249-12 (EEH). With the assistance of special deputy corporation counsel, we defended the City in a lawsuit for declaratory judgment seeking an interpretation of the State Procurement Code, Hawaii Revised Statutes Chapter 103D. The dispute arose out of the City's selection of Parsons Brinckerhoff Quade & Douglas, Inc. ("Parsons"), as a consultant for the Honolulu High Capacity Transit Corridor Project (the "Project"). Communications-Pacific was a sub-consultant listed by Parsons. During contract negotiations with Parsons, the City and Parsons agreed to revise the community outreach portion of the work which necessitated that a further sub-consultant be retained by Parsons, one qualified to provide the services called for under the revised scope of the community outreach work. Community Planning & Engineering ("CPE") was approved by the City as the sub-consultant qualified to do the new community outreach work added through the revision, and the scope of Communications-Pacific's anticipated involvement was reduced. Communications-Pacific sought a declaratory judgment that adding CPE as a sub-consultant to a contract after a selection committee had already evaluated and ranked prospective service providers violated the State Procurement Code.

The City filed a Motion to Dismiss on February 9, 2006, on the basis that sub-consultants have no legal standing to seek relief relative to a dispute over the State Procurement Code, and that the State Procurement Code and the rules adopted by the procurement board are the exclusive remedies available to all bidders. The court ruled that sub-consultants could not bring legal actions for judicial review outside the State Procurement Code, and that claims of sub-consultants can be brought under the State Procurement Code by the contractor that received the contract and for whom they were sub-consultants. The court dismissed the lawsuit for lack of jurisdiction.

Communications-Pacific has filed an appeal of the case to the Intermediate Court of Appeals. The appeal is entitled Communications-Pacific, Inc. v. City and County of Honolulu, et al., Supreme Court No. 28010. (Don S. Kitaoka, Reid M. Yamashiro).

Finance Section

Enterprise Resource Planning Project. We assisted the Department of Information Technology ("DIT") with its Enterprise Resource Planning ("ERP") project, an integrated computer software system to update and integrate the City's accounting and personnel procedures. Historically, the City's existing financial, personnel and payroll systems were separately implemented and maintained. ERP will consolidate those systems to improve reliability, efficiency, and productivity. We advised DIT and the Department of Budget and Fiscal Services in the solicitation and request for proposal process for the selection of the software vendor for ERP. Following the procurement process, the City selected CGI-AMS, Inc. as its contractor for ERP, entering into a $10 million, 2.5 year contract with the firm. We assisted with review and preparation of the contract documents with CGI-AMS, Inc., including Software Licensing Agreements and Implementation Services Agreements. We also assisted with procurement and contract documents for other vendors providing services and equipment to implement the project. (Paul M. Iguchi, Amy R. Kondo)

Contract Bid Protest. We defended the City in a contract bid protest filed with the State of Hawaii, Department of Commerce and Consumer Affairs ("DCCA"). The City had solicited bids for the construction of the East Honolulu Police Station. CC Engineering was the lowest bidder for the East Honolulu Police Station. After the bids were opened, the next lowest bidder, 57 Builders, protested the City's award to CC Engineering, alleging that the bid failed to list a specialty contractor to perform the concrete rubble masonry portion of the project. The City sustained 57 Builders' protest and CC Engineering protested the City's decision. The City denied CC Engineering's protest and the latter requested an administrative review of the City's decision with DCCA. The parties submitted the case to the DCCA hearings officer based on stipulated facts, briefs and oral arguments. DCCA agreed with the City's position and dismissed the appeal. The stay of the contract in place pending the protest was lifted and work proceeded on the project. No appeal was filed. (Amy R. Kondo, Gordon D. Nelson)

Infrastructure Section

Sierra Club, Hawaii Chapter, et al. v. City and County of Honolulu, et al., USDC Civil No. CV04-00463 HG-BMK. With the assistance of special deputy corporation counsel, we continue to vigorously defend the pending federal district court lawsuit filed in July 2004 and reported in our prior annual report, filed by the Plaintiffs, Sierra Club, Hawaii Chapter, Hawaii's Thousand Friends, and Our Children's Earth Foundation against the City and County of Honolulu and Frank Doyle in his official capacity as Director of the Department of Environmental Services. As reported, the lawsuit alleges various environmental wastewater related violations against the City including: Repeated spills of raw or inadequately treated sewage from the Sand Island, Honouliuli, Kailua, Waianae, and Kahuku wastewater treatment plants and/or from the collection systems that carry sewage to these wastewater treatment plants; Sand Island wastewater treatment plant permit noncompliances, e.g., lack of sewage disinfection, pesticide violations, percent removal of biological oxygen demand and total suspended solids, other plant and system upgrade delays, operation and maintenance violations, and grease program violation; Honouliuli wastewater treatment plant permit noncompliances, e.g., discharge of treated R-1 water and reclamation plant brine water, other discharge and operational problems, and inadequate storm water pollution control plan; Violations of the 1999 and 2002 Sand Island wastewater treatment plant administrative orders issued against the City; and Discharges of pollutants without a permit at Sand Island and Honouliuli wastewater treatment plants in violation of the federal Clean Water Act.

In their lawsuit against the City defendants, Plaintiffs seek: declaratory judgment establishing that the City is in violation of effluent limitations established pursuant to the Clean Water Act; injunction ordering the City to take all measures necessary and appropriate to curtail its violations of the Clean Water Act effluent limitations; civil penalties of up to $32,500 per day of each Clean Water Act violation committed by the City; and attorneys' fees and costs. The City filed motions to dismiss various claims alleged by Plaintiffs in their lawsuit and in September 2005, the Court dismissed five of the claims in the lawsuit. Among the claims remaining in the lawsuit are claims relating to alleged violations of the National Pollutant Discharge Elimination System permits for the Sand Island and Honouliuli wastewater treatment plants, and improper operation and maintenance of these plants. The Plaintiffs have filed a motion for reconsideration of the Court's September 2005 order. The parties are awaiting a ruling on that motion. The litigation was stayed in April 2006 by agreement of the parties, approved by the Court, for the parties to engage in settlement negotiations. (Maile R. Chun)

Land Use Section

Turkoglu v. ZBA, et al., First Circuit Court, Civil No. 05-1-1389-08 (EEH). We defended the decision of the administrative Zoning Board of Appeals ("ZBA") in an appeal to the Circuit Court of the ZBA decision denying an appeal by the Association of Apartment Owners of Boulevard Tower ("AOAO"). The appeal to the ZBA was filed by the AOAO. The AOAO appealed the decision of the Department of Planning and Permitting that denied the AOAO's request for an exception to the parking requirements for their building under the Land Use Ordinance. The building plans for the building provided for nine parking stalls. The building, however, was constructed with 10 parking stalls. The appeal to the Circuit Court was filed Pro Se by Appellant Dorothy Turkoglu, who is a unit owner in Boulevard Tower.

The AOAO neither appealed nor participated in Appellant's appeal. The Appellant filed various frivolous motions all of which were denied, however, during the hearings on these motions, the Circuit Court directed the Appellant to focus on what the court identified as the primary issue in the case, which was the legality of the ZBA automatic denial rule and whether the rule violated our Charter which provides that an affirmative vote of the majority of the entire membership of an administrative board is required for the board to take any action. In this case, the ZBA administrative rules require that an affirmative vote of a majority of the entire membership is required to take any action. The ZBA is composed of five members. Three ZBA members were present for the vote on the AOAO appeal, the vote was 2 to deny and 1 to affirm the appeal. The ZBA administrative rules further provide that the failure to obtain a majority vote at two separate meetings shall constitute a denial of an appeal. Because there was no majority vote at the first vote, the case was continued to a second meeting. At the second meeting the vote was again 2 to 1, and in accordance with the ZBA rules, the appeal was denied.

This issue was very important to the ZBA because the automatic denial rule has been in the ZBA rules for an extended period of time and had been applied in many prior ZBA cases. As counsel for the ZBA, we argued that the Intermediate Court of Appeals had already upheld the validity of the ZBA rule requiring denial of a zoning appeal whenever the ZBA failed to obtain a vote of a majority of its total membership at two separate ZBA meetings in Waikiki Marketplace Inv. Co.

v. Chair of the Zoning Board of Appeals (1997 appeal of a citation order).

At the oral argument in the Circuit Court appeal, the court stated that the Appellant had not met her burden of proof, and that the Waikiki Marketplace decision was the law of the case. The ZBA decision was affirmed. Appellant's motion for reconsideration was denied. (Dawn D.M. Spurlin represented the ZBA in the appeal).

Hui Malama I Na Kupuna O Hawaii Nei, et al. v. Wal-Mart, et al., Civil No. 03-1-1112-05 (VSM). We defended the City in a lawsuit involving the discovery and treatment of human remains at the construction site of the Wal-Mart/Sam's Club development on Keeaumoku Street. We prevailed in our motion for summary judgment on the court's finding that because there was no reason for the City to know that there would be human remains at the site of the project, the City has no obligation to comply with Section 6E-42, Hawaii Revised Statutes. This section of State law requires that prior to granting approval for any permit, license, certificate, land use change, subdivision or any other entitlement of use which may affect historic property or a burial site, the agency must notify the State of Hawaii, Department of Land and Natural Resources, to allow the department an opportunity for review and comment on the effect of the proposed project on the historic property or burial site. The court also ruled that the Plaintiffs' request that the permit issued by the City Department of Planning and Permitting be null and void was moot because the structure had been completed. The granting of this motion disposed of all claims against the City. (Lori K. K. Sunakoda)

Center for Bio-Ethical Reform, Inc. v. City and County of Honolulu**,** USCA No. 03-16650; USDC Civil No. 03-00154 DAE-BMK. This case challenges on free speech grounds Honolulu's prohibition on aerial advertising. The City, together with The Outdoor Circle and Scenic America, has vigorously defended the ban as a content-neutral regulation of the time, place and manner of exercising free speech rights. The City has forcefully argued that the ban is crucial to protecting and preserving Honolulu's outstanding and world-renowned scenic views and its visitor industry, and has made the case that the ban protects drivers and pedestrians from distractions that could cause traffic accidents.

Before this year the City succeeded in defeating plaintiffs' efforts to preliminarily enjoin the ban while the case was litigated, then defended that ruling on appeal to the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit"), and finally prevailed at trial in District Court.

This year we worked with special deputy corporation counsel to brief and argue a second appeal to the Ninth Circuit, securing a ruling from that Court that upholds Honolulu's ordinance. The City now awaits a decision by plaintiffs as to whether they will petition the U.S. Supreme Court to hear a further appeal of the matter. (Gordon D. Nelson)

Unite Here! Local 5, et al. v. City and County of Honolulu, et al., Civil No. 06-1-0265-02 (SSM). We defended this lawsuit, brought by the plaintiffs against the developer Kuilima Resort Company and the City, to enjoin the developer from any further construction activity for the Kuilima expansion project and to enjoin the City from any further processing of land use approvals and permits for the project. Plaintiffs claimed that the developer's Special Management Area Permit issued by the City for the project in 1986 had expired and that a supplemental environmental impact statement was required due to the change in the timing of the project. Plaintiffs filed a motion for preliminary injunction, which sought injunctive relief pending a trial on the merits of their claims. In April 2006, Circuit Court Judge Sabrina McKenna denied the plaintiffs' Motion for Preliminary Injunction, and agreed with the position of the developer and the City that the plaintiffs had failed to provide evidence that the change in timing of the project has had a significant effect on environmental impacts. (Don S. Kitaoka, Lori K. K. Sunakoda)

Nuuanu Valley Association v. City and County of Honolulu, et al., Civil No. 06-1-0501-03 (RKOL). We defended a lawsuit filed by a community association, Nuuanu Valley Association, which opposed a proposed subdivision development in the Nuuanu Dowsett Highlands area. In its lawsuit, the Plaintiff alleged, among other things, that the City denied Plaintiff access to public records maintained by the City in violation of Hawaii Revised Statutes ("HRS") Chapter 92F. In specific, Plaintiff alleged that the City denied Plaintiff access to copies of engineering reports submitted to the City's Department of Planning and Permitting ("DPP") by the applicant-developer, Laumaka LLC, and comments communicated by DPP to the applicant-developer's consultants regarding said reports. Plaintiff alleged that as a result of the City's nondisclosure, Plaintiff was harmed because it was not able to meaningfully participate in the planning and permitting process. Plaintiff requested that the Circuit Court issue a preliminary injunction prohibiting DPP from further review and processing of the subdivision application for the development. Plaintiff also sought an order from the Circuit Court requiring DPP to produce all engineering and other technical reports pending review and evaluation for acceptance of the application by DPP, including any comments on such reports.

In May 2006, Judge Randal Lee denied Plaintiff's motion for a preliminary injunction. The Court made the following significant findings in this case: The City has made available for review and copying all reports that have been accepted by DPP and made part of DPP records relating to the subdivision application. Reports with the City's comments thereon that have not been accepted by the City are not records maintained by the City and therefore are not "government records" that are required to be disclosed under HRS Chapter 92F. Even assuming that the City did maintain copies of reports that were submitted to the City but not accepted, such reports containing responses and comments of individuals involved in the approval process would fall under the exclusionary provision of HRS Section 92F-13 whereby disclosure of such reports and the comments thereon would not be required. Plaintiff presented no expert evidence to support a finding that the proposed subdivision project poses a flood or rock slide hazard to the area. Contrary to Plaintiff's claim of an inability to meaningfully participate in the planning and permitting process, Plaintiff, in fact, has participated in the governmental process and has voiced its concerns about the proposed subdivision with the information provided by the City. DPP, upon

being informed of Plaintiff's concerns, did not take those concerns lightly and in fact addressed Plaintiff's concerns; and the City also required the developer to address Plaintiff's concerns.

Plaintiffs also allege in the lawsuit that an Environmental Assessment must be prepared for the project. The City's position is that the requirement for an environmental assessment has not been triggered by the project. This litigation is ongoing and has not yet been set for trial. (Don S. Kitaoka, Lori K. K. Sunakoda)

Personnel Section

UPW v. City and County of Honolulu, Emergency Services Department. These two separate grievances were filed by a paramedic employee ("Grievant") who was suspended for 20 days and later terminated for his failure to meet applicable standards while responding to three different incidents involving seriously and critically ill patients. The Union filed a grievance alleging the City violated Section 11, Discipline, of the Unit 10 collective bargaining agreement ("CBA"), because the City-Employer did not have just and proper cause to suspend and terminate the Grievant. The Union argued that the City-Employer failed to consider exonerating evidence in favor of the Grievant, erroneously concluded that the Grievant was at fault in his handling of the patients, and placed insufficient weight on the Grievant's superior prior record. Following a hearing on the consolidated cases, the arbitrator held that the 20-day suspension grievance was untimely filed at Step 1 of the CBA grievance procedure and returned the grievance to the parties without ruling on its merits. The arbitrator also held that the City-Employer had just and proper cause under Section 11 of the CBA to terminate the Grievant because: 1) there was reasonable evidence that he did not meet the applicable standards; and 2) termination does not unreasonably relate to the seriousness of the offense because lives are at stake if the Grievant does not perform his job properly. The arbitrator's decision: 1) again reinforces the City's position that untimely Union grievances do not have to be considered by the City and the arbitrator has no jurisdiction over same; and 2) recognizes and strengthens the City's demands on its paramedics to meet the highest level of local and national standards. (Florencio C. Baguio, Jr.)

UPW v. City and County of Honolulu, Department of Environmental Services. This grievance was filed by an employee ("Grievant") who was terminated for threatening his supervisor on successive days. The Union filed a grievance alleging the City violated Section 11, Discipline, of the Unit 10 collective bargaining agreement ("CBA"), because the City-Employer did not have just and proper cause to terminate the Grievant. Following its investigation, the City-Employer found that the Grievant's actions violated the City's workplace violence policy. The City-Employer placed the Grievant on leave without pay, after which he was terminated. The arbitrator held that the grievance was untimely filed at Step 2 of the CBA grievance procedure and returned the grievance to the parties without ruling on its merits. The net effect of the arbitrator's ruling is that the Grievant's termination will stand. The arbitrator's decision: 1) reinforces the City's position that untimely grievances do not have to be considered; 2) recognizes the limits on the arbitrator's jurisdiction in hearing matters not brought pursuant to the CBA's grievance procedure; and 3) forces the Union to move vigilantly to comply with the grievance deadlines or risk dismissal of its grievances. (Florencio C. Baguio, Jr.)

SHOPO v. City and County of Honolulu, Honolulu Police Department. This grievance was filed by SHOPO on behalf of a male police officer who was temporarily transferred to an assignment outside of his district after a subordinate female officer alleged that the Grievant had made comments of a sexual nature towards her. The Union alleged that the department's action was "arbitrary, capricious, discriminatory, and in violation of the Unit 12 collective bargaining agreement." The department's position was that the transfer was the result of the complaint and the need to investigate same. The arbitrator denied the grievance and held that the decision to transfer the Grievant was reasonable under the circumstances and was not motivated by any discriminatory, improper, punitive or anti-union intent. The arbitrator's decision recognizes that the department was legally obligated by the City's and the department's Sexual Harassment Policies, and the Equal Employment Opportunity regulations and federal cases regarding same, to take immediate action (in this case, separation of the parties pending the investigation) when it receives an allegation of sexual harassment. (Florencio C. Baguio, Jr.)

Alan Goto, et al. v. Marc Henderson, et al., Civil No. 05-1-0846-05. This is a workers' compensation lien case based on an automobile accident which resulted in the death of a solo bike officer and injuries to numerous others. A number of lawsuits were filed as a result of the accident. The cases were consolidated and the plaintiffs eventually agreed to a mediated settlement amount.

However, the parties could not agree on how much of the settlement proceeds the City should receive as a result of its lien. The officer's estate argued that the City's lien should be limited to the amount in workers' compensation benefits which the City provided to decedent. Under that scenario, the City would recover approximately $4,000.00. A second workers' compensation beneficiary took the position that the entire lien should be assessed against the estate and that the City should not be entitled to a credit against future benefits, which the City valued at close to $95,000.00. In that case, the City would recover approximately $37,000.00 of its lien but would be required to continue paying weekly death benefits.

The City filed an Application for and Determination of First Lien Against Any Judgment for Damages and/or Settlement to resolve the matter. The City prevailed at the hearing, resulting in a recovery of approximately $137,000.00. (Paul K. W. Au)

John Palimoo v. Honolulu Police Department, Case No. AB 2004-040. The Employee-Claimant appealed the State Department of Labor and Industrial Relations, Disability Compensation Division ("DCD"), decision denying his claim that he sustained an avascular necrosis (AVN) condition on October 20, 2002, arising out of and in the course of his employment.

The State Labor Appeals Board issued a decision on September 7, 2005, affirming the DCD decision. The Board relied on the written opinions and testimony of Robert Smith, M.D., to determine that the October 20, 2002 accident in which Claimant allegedly slipped but did not fall, did not cause, aggravate or accelerate the Employee-Claimant's preexisting AVN condition. (Clark H. Hirota)

Lester Rodrigues v. Department of Parks and Recreation, Case No. AB 2001-515. The State Labor Appeals Board ("LAB") issued its decision on September 12, 2005, affirming the November 19, 2001 decision of the Director of the Department of Parks and Recreation denying the Employee-Claimant Lester A. Rodrigues' claim for a June 29, 1993 injury. The Employee-Claimant filed a workers' compensation claim as a result of being poked by a metal object while carrying a trash bag at Lanakila District Park. The Employer, City and County of Honolulu, accepted liability for the claim.

The Employee-Claimant subsequently developed persistent pain in his right thigh area following the incident and underwent a myriad of diagnostic tests and orthopedic and psychiatric evaluations. However, the cause of the pain was never definitively established. In 1997, Claimant underwent a blood test which proved positive for the Hepatitis B virus. He subsequently filed a WC-5 workers' compensation claim alleging that he contracted the virus as a result of the June 29, 1993 incident. This claim was denied.

The LAB upheld the denial finding the City presented substantial evidence to establish that the Employee-Claimant could not have been exposed to the Hepatitis B virus as a result of the June 29, 1993 incident. The board relied on the medical report and testimony of Dr. Leonard Cupo on which to base its conclusions. We were also able to discredit the Employee-Claimant's allegation that he was poked by a needle or syringe on the date of the accident and discredit the expert testimony of Dr. Rahman, offered by the Employee-Claimant, by attacking the background and conclusions of the witness.

Finally, we were able to rebut the Employee-Claimant's argument that the claim should be compensable as an occupational injury under Flor v. Holguin, 94 Hawai'i 70 (2000), which was critical as there is nothing in the record to establish an alternate exposure by the Employee-Claimant to the Hepatitis B virus. (Paul K. W. Au)

Lester Rodrigues v. Department of Parks and Recreation, Case No. AB 2004-48. The State Labor Appeals Board ("LAB") issued its Decision on September 12, 2005, affirming the December 23, 2003 decision of the Director of the Department of Parks and Recreation denying the Employee-Claimant's request to reopen his claim for further medical treatment.

The Employee-Claimant filed a workers' compensation claim after he slipped and fell on his back, left hip and left arm while working as a groundskeeper. The Employer, City and County of Honolulu, accepted liability for the claim. The Employee-Claimant was treated at the emergency room on the day of the accident. Despite being scheduled for follow-up care, the Employee-Claimant did not seek further treatment following a September 28, 1992 visit. His doctor submitted a final report on January 21, 1993, indicating that the Employee-Claimant did not return for further treatment.

In 1997, the Employee-Claimant began treatment with Dr. Inam Ur Rahman complaining, among other things, of left shoulder pain. The Employee-Claimant was subsequently diagnosed with a torn rotator cuff in the left shoulder for which he underwent surgery.

The Employee-Claimant sought payment from the City for his treatment, which the City denied. We defended the denial on the basis that the initial injury was minor in nature and the Employee-Claimant was diagnosed with gout which his treating physician felt was affecting his shoulder. We also pointed out that prior to being diagnosed with a torn rotator cuff, the Employee-Claimant informed his physician that he sustained the injury while pulling on an object at work which was clearly inconsistent with the work-related slip and fall incident on September 21, 1992.

The LAB upheld the City's position, finding the evidence presented by the City showed that Claimant's need for further treatment was not related to or required by the September 21, 1992 incident. (Paul K. W. Au)

Walsh, et al. v. City and County of Honolulu, USDC Civil No. CV05-00378 DAE/LEK. We defended the City in a lawsuit filed by Plaintiffs in a federal district court lawsuit and represented by the American Civil Liberties Union ("ACLU") that contested the constitutionality of state law that requires all applicants for public employment to be residents of the State of Hawaii at the time of application for employment. On the Plaintiffs' motion for preliminary injunction, U.S. District Court Judge David Ezra granted the motion and issued a preliminary injunction enjoining the State of Hawaii and the City from enforcing the state statutory requirement of residency at the time of application.

Applying even the least stringent constitutional test, the court found that the law lacked a rational connection to the purposes for the law advanced by Defendants State and the City to assure that job applicants were committed and loyal to Hawaii and knowledgeable concerning its problems, to promote efficiency in the processing of applications, and to protect the State and City against high turnover in employment.

As a consequence of the court's decision, we have notified our recruitment personnel of the injunction and their agency has notified the general public that the residency requirement is no longer being enforced, has begun deleting references to the residency requirement from job postings, web pages, application forms and other recruitment materials and has suspended use of its residency questionnaire.

The City has elected not to join the State in the appeal of the District Court order. (Gordon D. Nelson)

LITIGATION DIVISION

The Litigation Division consists of 11 attorneys: a Division Head, and 10 trial attorneys. The Division is supported by 11 support staff which includes a supervisor, three paralegals, four legal clerks, and three messengers.

The Litigation Division represents the City and County of Honolulu before all of the state and federal courts in the State of Hawaii, including the two appellate Courts of the State of Hawaii, the United States District Court for the District of Hawaii, and the Ninth Circuit Court of Appeals. The division processes and litigates all claims by or against the City, seeks collection of monies owed to the City, and handles Subpoenas Duces Tecum directed to the Honolulu Police Department.

In addition to tort claims, the Litigation Division handles claims relating to contracts, construction, civil rights, natural resources, employment issues and other non-tort related matters.

Statistics

During the 2005-2006 fiscal year, the Litigation Division handled a great number of cases against and for the City and County of Honolulu, including active lawsuits as well as pre-lawsuit claims, as set forth below:

Pending cases as of June 30, 2005: 1,389
Number of cases completed: 561
Number of cases opened: 1,299
Pending cases as of June 30, 2006: 2,127

Highlights and Accomplishments

Lawsuits

As in previous years, the Litigation Division continues to be involved in personal injury and civil rights actions filed against the City, its departments and its employees. During the past year, the division took nine cases to trial and filed dispositive motions fairly early in the litigation in a large number of other cases. The division was successful in the majority of these trials and motions. Following is a brief summary of several of the cases successfully completed by the division in the past year.[1]

In Harrell v. City and County of Honolulu, et al, United States District Court for the District of Hawaii, Plaintiff brought suit alleging that the City, the Royal Hawaiian Band, the Band Master, the Assistant Conductor, and the Woodwind Section supervisor had discriminated against him as a result of Plaintiff's race. Plaintiff had applied for a position as a permanent, full-time bassoon play with the band and was ranked last of the three applicants. The position was not offered to Plaintiff because Plaintiff did not play well enough for a permanent position with the Royal Hawaiian Band. Plaintiff alleged that he was not given the permanent position as a result of racial discrimination and that he suffered emotional distress and monetary losses. The case was tried to a jury of seven. After six days of trial, the jury returned its verdict in favor of the City, the band and the band officials. Plaintiff has appealed this case to the 9th Circuit Court of Appeals where the case is pending. (Moana A. Yost, Derek T. Mayeshiro, Jane Kwan)

In Ranches v. City and County of Honolulu, First Circuit Court of Hawaii, Plaintiff filed a lawsuit against the City alleging negligence. On Memorial Day, 2003, Plaintiff was at the Ewa Beach Park picnicking with his family. Around 1:00 p.m., Plaintiff went into the men's restroom and as he entered, he slipped and fell sustaining a spiral fracture to his right leg. As a result of his injury, in addition to his medical bills, Plaintiff was out of work approximately eight months. Plaintiff alleged the City was negligent in the maintenance of the restroom and sought damages. This case was in the Court Annexed Arbitration Program and after an arbitration hearing, the City obtained an award in its favor. Plaintiff requested a new trial after the arbitration award and the case was tried to a jury of 12. After four days of trial, the jury returned its verdict in favor of the City. Plaintiff has appealed this case to the Hawaii Supreme Court where the case is pending. (Laura A. Kuioka, Marie Manuele Gavigan)

In Hokland v. City and County of Honolulu, First Circuit Court of Hawaii, Plaintiff filed his lawsuit against the City alleging negligence. In mid-afternoon on February 9, 2004, Plaintiff, who lives in Waikiki, was returning home from the grocery store. On his way home from the store, Plaintiff stopped at Quizno's and bought lunch, consisting of a sandwich and a soda. While walking on Kuhio Avenue and carrying his groceries, sandwich and soda, Plaintiff tripped and fell on an uneven portion of the sidewalk, injuring his knee. Plaintiff alleged that the City was negligent in its maintenance of the sidewalk and that this negligence was the cause of his injuries. This case was in the Court Annexed Arbitration Program and after an arbitration hearing, the City obtained an award in its favor. Plaintiff requested a new trial after the arbitration award and the case was tried to a jury of 12. After three days of trial, the jury returned its verdict in favor of the City. (Jane Kwan, Derek T. Mayeshiro)

In Coloyan v. Badua, et al, United States District Court for the District of Hawaii, Plaintiff brought suit against three police officers alleging that the officers had violated her civil rights by searching her home without a warrant or without her consent. The police officers had been given a federal arrest warrant for Plaintiff's son and the officers' investigation indicated that the son was living with Plaintiff in her home in Ewa Beach. The police went to Plaintiff's home to arrest her son and when Plaintiff answered the door, she told the police that her son was not home. Plaintiff then gave the officers

[1]The cases specified in this subsection are not a comprehensive listing of all cases handled by the Litigation Division and are merely offered as a representative sample of the types of matters assigned to the Division.

permission to search her house for her son. The police quickly looked through Plaintiff's house and immediately left after not finding the son in Plaintiff's home. Plaintiff sued the police officers alleging an unlawful search of her home. This case was tried to a jury of nine. After five days of trial, the jury returned its verdict in favor of the City. Plaintiff has appealed this decision to the 9th Circuit Court of Appeals where the case is pending. (Kendra K. Kawai, Marie Manuele Gavigan)

The Division was successful in getting the case of Fox, et al, v. City and County of Honolulu, et al, United States District Court for the District of Hawaii, dismissed on motion. Plaintiffs brought suit against the City alleging violations of (1) the Americans With Disabilities Act, (2) §504 of the Rehabilitation Act, and (3) their due process rights. The crux of Plaintiffs' complaint was that the Honolulu Police Department ("HPD") was not sufficiently enforcing disabled parking laws which were designed to benefit disabled individuals. HPD had in place a program to enforce proper use of disabled parking and disabled parking permits through the use of commissioned volunteer parking enforcement officers. Plaintiffs, who are disabled persons, were commissioned volunteer parking enforcement officers who, by law, are allowed to go onto private property to enforce parking in handicap stalls and who are also allowed to confiscate special handicapped licenses and removable windshield placards if these placards were being improperly used. Subsequent to the commencement of this program, HPD implemented a new mandate that required the volunteer enforcement officers, including Plaintiffs, to avoid confrontations with potential violators unless the volunteers had the physical presence of a uniformed police officer as back-up. Plaintiffs alleged that this new mandate, as well as an alleged "lax" enforcement program violated their civil rights as well as the civil rights of all similarly situated persons. The City filed a motion for summary judgment which was granted by the Court. (D. Scott Dodd)

The division was successful in getting the case of Detroy v. City and County of Honolulu, et al, United States District Court for the District of Hawaii, dismissed on motion. Plaintiff brought suit against the City and a police officer for an alleged violation of Plaintiff's civil rights. Plaintiff was convicted of promotion and use of marijuana based upon evidence found in a search of his residence in 1997 conducted via search warrant. Plaintiff's conviction was overturned by the Hawaii Supreme Court in 2003, based upon a finding that the search warrant was not supported by probable cause. The Supreme Court ruled that the facts contained in the officer's affidavit were insufficient to establish probable cause, that the search warrant should not have issued and that the search violated Plaintiff's rights as guaranteed under the Constitution. As part of the information used to obtain the warrant, the officer had employed the use of thermal imaging to measure the temperature in the apartment, but the Hawaii Supreme Court invalidated the use of thermal imaging without a prior warrant. In granting summary judgment, the Court ruled that as to the City, there is no evidence of an unconstitutional custom or policy as necessary for purposes of municipal liability under 42 U.S.C. §1983. Therefore all claims against the City in this case were dismissed. With regard to the officer, the Court ruled that the officer was entitled to qualified immunity and therefore judgment was granted in favor of the officer. (Richard D. Lewallen)

The division was successful in getting the case of Visconde v. City and County of Honolulu, et al, United States District Court for the District of Hawaii, dismissed on motion. In this case, Plaintiff brought suit against a police officer alleging that the officer violated Plaintiff's civil rights by the alleged unlawful use of excessive force. Plaintiff also made State law claims of assault and battery against the officer. On June 30, 2004, Plaintiff was at his employer's home when Plaintiff discovered that his pick-up truck had been stolen around 3:00 pm. Plaintiff reported the truck stolen to HPD and about 45 minutes later, Plaintiff's employer who had gone out saw the truck. The employer called both Plaintiff and the police to tell them that the truck had been found. When the officer was dispatched to the truck, he confirmed with dispatch that the suspect was in the vehicle. When the officer arrived at the stolen vehicle, he saw two individuals (later identified as Plaintiff and his friend) walking around the curb side of the vehicle. The officer believed these two individuals to be the suspects and the officer ordered the two individuals to stop. Plaintiff's friend responded immediately to the officer's orders, but Plaintiff did not and kept walking around the vehicle. The officer fearing that Plaintiff had a weapon, took Plaintiff down to the ground. Plaintiff alleged that he suffered severe injuries and sued the officer and the City for alleged civil rights violations and for the state law claims of assault and battery. Both the City and the officer filed motions for summary judgment in this case. After the motions were filed, Plaintiff voluntarily dismissed his claims against the City with prejudice. The court granted the officer's motion with respect to Plaintiff's civil rights claims, ruling that the officer was entitled to qualified immunity, and dismissed Plaintiff's state law claims. (Curtis E. Sherwood)

The division successfully settled several civil rights cases against police officers. (Swanson v. City, Ford v. City, Barnes v. City). In these cases, police officers were accused of unlawful search, unlawful detention or excessive use of force. The division also successfully settled several major motor vehicle accident cases in which negligent road design was alleged (Driscoll v. City, Hughes v. City), several employment cases (Davis v. City, Moses v. City), and several negligence cases (Sullivan v. City, Chun v. City, Tomimoto v. City).

The division is currently defending the City in several high profile use-of-force or police practices cases (Edenfield v. City, and Gaspar v. City). Several motor vehicle collision cases involving city roadways are also being handled by the division (Kaina v. City, Filimoehala v. City, and Thompson v. City). Several beach drowning or injury cases are being defended by the Division (Hoggs v. City, Sylva v. City, Mendoza v. City, Estates of Powell and Laughlin v. City, Kuhlmeier v. City). The division is also litigating numerous negligence claims filed against the City, (Okamoto v. City, Stankewich v. City, and Robinson v. City).

The division has also taken the lead in defending the City in several non-traditional tort cases involving employment practices, sexual harassment, workplace violence and whistleblower claims (Sunia v. City, Skellington v. City, Olipares v.

City, and Matsumoto v. City). The division has taken on the task of representing city officials who have been sued in their individual capacity for acts or omissions in their employment (Whang v. City, English v. City, and Shannon v. City). The division is also involved in defending a Declaratory Judgment action in which the promulgation of an administrative rule is being challenged (AOAO Waikiki Shore, Inc. v. City).

The division was successful in several cases in the Appellate Courts; these were cases in which the City prevailed at trial or by dispositive motion and the Plaintiffs appealed the outcome. In Kubeckova v. City and County of Honolulu, the City obtained a verdict after jury trial and Plaintiff appealed to the Hawaii Supreme Court. The Hawaii Supreme Court affirmed the jury verdict. In Lum v. City and County of Honolulu, the City obtained a verdict after jury trial and Plaintiff appealed to the Hawaii Supreme Court. The Hawaii Supreme Court dismissed the appeal on a motion filed by the City. In Nursall v. City and County of Honolulu, the City obtained judgment after filing a motion for summary judgment. Plaintiff appealed the judgment in favor of the City and the Hawaii Intermediate Court of Appeals affirmed the judgment in favor of the City.

Additionally, the division has been litigating claims against the City in actions previously handled by the Counseling and Drafting Division. In the course of the year, the Litigation Division has taken on highly specialized and technical actions such as injunctive relief proceedings (Onishi v. City), breach of contract actions (KD Construction v. City), and actions relating to the land or diversion of water (Masters Properties v. City, Poland v. City).

State Legislation

The Litigation Division also continued with its advocacy of legislation favorable to the City by drafting proposed bills and testimony regarding tort reform, governmental immunity, and governmental tort claim procedures. This past year, the division took an active role in its advocacy of legislation by testifying before numerous House and Senate Committees regarding various proposed bills that directly impact the City.

FAMILY SUPPORT DIVISION

The Family Support Division ("FSD") provides legal representation for the State of Hawaii Child Support Enforcement Agency ("CSEA") in several types of Family Court proceedings in the City and County of Honolulu. FSD establishes paternity, secures child support, medical support, and provides enforcement in complex Family Court cases. FSD also handles intracounty and interstate paternity actions.

Historically, the City and County of Honolulu prosecuted parents on Oahu for criminal and civil non-support. Presently, the Federal Government and the State of Hawaii compensate the City for one hundred percent of FSD's operating expenses through CSEA. FSD provides these services pursuant to a cooperative agreement between the Department of the Corporation Counsel, City and County of Honolulu, and the Child Support Enforcement Agency, State of Hawaii, and in compliance with Title IV-D of the Social Security Act.

Statistics

During the 2005-2006 fiscal year 2,465 new referrals for paternity establishment were made to the FSD. An additional 570 cases were carried over from the previous year. Paternity was determined in 2,393 cases during the 2005-2006 fiscal year. An additional 642 cases are pending and should be completed during the 2005-2006 fiscal year.

Pending cases as of July 1, 2004: 570
Number of cases completed: 2,393
Number of cases opened: 2,465
Pending cases as of June 30, 2005: 642

Highlights and Accomplishments

Expedited Paternity Project

The Family Court of the First Circuit in conjunction with FSD and CSEA has established the Expedited Paternity Project. This project allows parties to other types of Family Court proceedings to voluntarily establish paternity of their children at the same time. The need to do a separate paternity action is thereby avoided. This saves the First Circuit Court and FSD the clerical and legal costs related to the drafting, filing, serving, scheduling, and hearing a paternity case.

Paternity Section of the Hawaii Divorce Manual

FSD legal staff wrote a section on paternity and paternity in divorce for the 2001 Hawaii Divorce Manual for use by Hawaii family law practitioners and the general public. The section provides an intensive overview of the substantive law, procedures, case digests, forms, and other relevant materials. FSD has updated the section each year. FSD is in the process of updating the section for a new edition of the Manual to be published this year.

Public Education

FSD legal staff made an effort to participate in judicial and public education on the issues of paternity and child support and have given educational presentations to many groups and state agencies.

Legislative Changes Initiated by Division

FSD does not initiate legislative changes to child support and paternity laws. FSD makes recommendations to CSEA and the Agency takes the lead on any legislative changes.

Court Paternity Forms and Procedures

In a collaborative effort with the Family Court, FSD has been working to modify existing court paternity forms and procedures.

Training

FSD legal staff attended numerous professional development-training sessions provided by the Department of the Corporation Counsel, the Child Support Enforcement Agency, the Department of Human Services, the Hawaii State Bar Association and the Family Court.

REAL PROPERTY TAX DIVISION

The Real Property Tax (RPT) Division is comprised of two attorneys. They are assisted by two support staff.

The RPT Division maximizes intake of real property assessment revenues to the City and County of Honolulu (City) by efficiently managing cases and vigorously defending the City against real property tax appeals brought in Tax Appeal Court (TAC). On occasion, the RPT Division also defends the City against appeals brought before the Board of Review.

The RPT Division provides legal advice and support to the Real Property Assessment Division (RPA), and the Department of Budget and Fiscal Services (BFS), as necessary to supplement the Counseling and Drafting Division's functions. Also, the RPT Division assists the RPA in drafting and implementing procedures and proposed legislation that will support assessments and resolve disputed legal issues.

The RPT Division coordinates and works with the other counties in developing appraisal procedure and legislation, as well as litigation practices through the ongoing exchange of information and support of legal positions on common issues.

The RPT Division continues to build good working relationships with the TAC Judge and court personnel, while implementing office and court procedures to streamline prompt resolution of cases. The RPT Division continues to obtain information about properties through discovery in court cases to assist the RPA and to optimize the assessment process, and uses the City's private consultant/appraiser for appraisal training and litigation support.

Statistics

During the 2005-06 fiscal year, in resolving appeals before the TAC, the RPT Division recovered about $1.5 million in total taxes and approximately $950,842 above the tax amounts claimed by the appellant taxpayers.

For the fiscal year, the RPT Division opened 82 appeals of real property parcels, had a workload of 511 appeals and completed and closed 398 appeals. The RPT Division also received and completed assignments of requests for opinions and assistance on other city matters. Additionally, the RPT Division generally received about two to four informal requests per week from the RPA for advice and other assistance.

Highlights and Accomplishments

Appeals and Related Matters

Alford v. City and County of Honolulu, 109 Hawai'i 14, 122 P.3d 809 (2005). Owners of transient vacation units within the Waikiki Shore condominium project filed an action against the City seeking a judgment vacating the classification of their units as "hotel and resort" for tax years 2000 and 2001, restoring the classification to "apartment," and refunding all excess taxes collected under the "hotel and resort" classification. In ruling in the City's favor on the taxpayer's motion for summary judgment, the TAC (1) vacated the 231 assessments of the Waikiki Shore units, and (2) directed the City to promulgate a rule clarifying the classification criteria for condominiums, and to reassess the disputed units. Significantly, the TAC declined to restore the "apartment" class, as urged by the taxpayers. The Hawaii Supreme Court, on an appeal by the taxpayers, affirmed the TAC's order. This decision allows the City to retroactively classify transient vacation units in the Waikiki Shore project for tax years 2000 and 2001, as "hotel and resort" and to recover roughly $200,000 in taxes withheld. The Alford decision is also applicable to the classifications of Waikiki Shore units determined for the 2002 tax year; such classifications were made before the City promulgated a Chapter 91 HRS rule regarding condominium classification.

Tax Appeal of Ford Island Housing, LLC. Case Nos. 04-0028 to 04-0041 and 05-0011 to 05-0023. The RPT Division prevailed on summary judgment in these consolidated tax appeals brought by the owner/developer of former military housing projects at Barbers Point NAS and Iroquois Point. The developer sought to invalidate, on a technicality, RPA's addition of more than 2,000 housing units to the City tax roll. The TAC ruled the amended assessments of the newly privatized housing projects were proper, resulting in the validation of over $200,000,000 in assessed values and over $800,000 in tax dollars.

Other Matters

During the fiscal year, the RPT Division provided advice and assisted on a variety of other matters such as:

Foreclosure Notice and Sale. The RPT Division assisted BFS by preparing an opinion regarding service of the final foreclosure notice on owners of property situated in the City who reside in Japan, in light of the refusal by Japan to allow service under the Hague Convention. The RPT Division also routinely assists BFS with the non-judicial foreclosure sale held annually to satisfy the City's outstanding real property tax liens, prepares deeds for the properties sold, and resolves disputes arising from claims to surplus funds.

Real Property Tax Relief. The RPT Division prepared opinions regarding the legal ramifications of proposed tax relief legislation, monitored for legality the tax relief bills introduced in the City during the first half of 2006, and testified at City Council hearings when necessary.

Charter Commission Proposals. The RPT Division analyzed amendments to the City Charter, which proposed to cap property tax assessments and to create tax policy by initiative.

State of the City Address. The RPT Division drafted language regarding a community benefits tax credit for homeowners adjacent to Waimanalo Gulch for the Mayor's State of the City address.

Charitable Exemptions. The RPT Division performed research and rendered opinions to RPA denying exemptions from taxation sought by various entities.

ETHICS COMMISSION*

Charles W. Totto, Executive Director and Legal Counsel

The purpose of the Ethics Commission is to ensure that city officers and employees understand and follow the standards of conduct governing their work for the public. The most common areas of inquiry are financial and personal conflicts of interest, gifts, political activities, post-government employment and the misuse of government resources or positions. The commission implements its objectives through a balance of training programs, ethics advisory opinions and enforcement actions.

The ethics laws are found in Article XI of the Revised Charter and Chapter 3, Article 8, of the Revised Ordinances. To find out more about the commission and its activities, visit our web site at www.honolulu.gov/ethics. The web site has information about the commission's meetings, procedures, the standards of conduct, and useful guidelines for the public and employees and officers.

The seven commission members are appointed by the Mayor and confirmed by the City Council. Commissioners serve staggered five-year terms. The members during Fiscal Year (FY) 2006 were:

	Term Expiration
Lex R. Smith, Esq., Chair	December 31, 2006
Raymond H. Fujii, Vice-Chair	December 31, 2006
Susan H. Heitzman	December 31, 2010
Matthew H. Kobayashi	December 31, 2009
Wayne T. Hikida	December 31, 2009
Cynthia M. Bond	December 31, 2008

The commission is staffed with an executive director/legal counsel and a legal clerk. The commission's budget for FY06 was $158,404 and will be $158,424 for FY07.

** The Ethics Commission is attached to the Department of Corporation Counsel for administrative purposes only.*

Education and Training

The commission staff continued the mandatory ethics training for all elected officials, managers, supervisors and board and commission members. Honolulu's mandatory ethics training programs is one of the most ambitious in the United States. In FY06 the commission staff trained 401 officials, bringing the total to over 3,200 public servants trained since the law was enacted. In addition, the commission staff presented our "Ethics Checklist" orientation to 531 new city officers and employees. As a result, almost all of the current city officials and more than half the city workforce have received some form of ethics training. Some agencies are taking advantage of the training beyond those who are mandated to attend. For example, all Council staff, Emergency Medical Services personnel and Fire Department recruits also attend training tailored to their work. These programs continue to greatly reduce the number of unintentional ethics violations. In addition, these programs should increase public confidence in our city employees and officers.

Advice and Enforcement

In the past fiscal year, the commission received 387 requests for advice and complaints. By the end of the FY06, the commission had responded to 372. The commission also received and reviewed 413 financial disclosure statements from high-level city officials.

The commission held 11 meetings and issued six formal advisory opinions, finding violations of the standards of conduct in three cases. In one violation case, a supervisor misused city resources by giving unearned overtime to some of his

employees for five months, until the commission investigated. The commission recommended to the department director that the supervisor receive a two-week suspension without pay. In the second case, the commission stopped an "Avon Lady" from using city time and other resources to sell her products to other city employees. In the third case, a supervisor was indirectly involved in purchasing products for the City from his live-in girlfriend, creating an appearance of a conflict of interest.

As to legislation, the commission received jurisdiction over lobbyists and lobbying, and helped shape the new Council policy on gifts to the City. Also, the commission continued its support of a proposed charter amendment that would be authorize it to impose a civil fine on elected officials who violate the City's ethics laws. The voters will be presented this issue in the 2006 general election.

The commission updated its web site to include all its formal advisory opinions, along with an updated index and other information. The Commission received 5,411 hits on its web site in FY06.

Goals for FY07 include:

1. Augment the commission's budget to meet the increasing demand placed on staff by the number of complaints against city employees and officers;
2. Continue the mandatory training for city managers, supervisors, elected officials and board and commission members;
3. Offer training on the city's ethics laws to public employee unions and contractors, consultants and lobbyists to the City; and
4. Begin to implement the commission's Three-Year Operating Plan, which, among other things, calls for closer working relations with other agencies, drafting new lobbying laws, and preparing the necessary legal framework in the likelihood that the commission will be authorized to impose civil fines on elected officials who violate the ethics.